

PUBLIC ACCESS TO WARRANTS AND MUG SHOTS

GENERAL RULES

- The Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) defines a public record as any record a public agency maintains; the definition specifically includes photographs. *See* I.C. § 5-14-3-2(n).
- Some public records may be confidential or disclosable at the discretion of the public agency. *See* I.C. § 5-14-3-4. All records which are not excepted from disclosure must be made available for public inspection and copying. I.C. § 5-14-3-3.
- An agency cannot declare records confidential absent statutory authority or rulemaking authority allowing the agency to classify records confidential. I.C. § 5-14-3-4(a)(2).
- If an agency does not maintain records a person requests, the agency does not violate the APRA by not providing those records. *Opinion of the Public Access Counselor 05-FC-255*.

WARRANTS

- An agency may not disclose records the Indiana Supreme Court declares confidential (through its Administrative Rules) unless a state or federal statute or a court order requires access to the records. I.C. § 5-14-3-4(a)(8).
- Indiana Supreme Court Administrative Rule 9 declares arrest warrants and search warrants confidential *only if* an agency has yet to serve them **and** *only if* a trial judge has ordered them to be kept confidential. Ind. Admin. R. 9(G)(1)(b)(x), *cited in Opinion of the Public Access Counselor 04-FC-36*.

MUG SHOTS

- A law enforcement agency generally has the discretion to withhold investigatory records. *See* I.C. § 5-14-3-4(b)(1). Investigatory records contain information compiled during the investigation of a crime. I.C. § 5-14-3-2(h).
- A mug shot does not necessarily fall under the investigatory records exemption. Instead, an agency must present specific facts to prove that the record falls under the exemption. *See* I.C. § 5-14-3-9(f)-(g).
- An agency cannot use the investigatory records exemption to arbitrarily deny release of a mug shot. *See* I.C. § 5-14-3-9(g)(2). Therefore, an agency should establish a consistent policy regarding the release of mug shots.